



DEPARTMENT OF HEALTH & HUMAN SERVICES

Food and Drug Administration
Rockville MD 20857

JUN 8 2011

Re: ProGel Pleural Air Leak Sealant
Docket No. FDA-2010-E-0399

The Honorable David J. Kappos
Under Secretary of Commerce for Intellectual Property
Director of the United States Patent and Trademark Office
Mail Stop Hatch-Waxman PTE
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Director Kappos:

This is in regard to the application for patent term extension for U.S. Patent No. RE38158 filed by Neomend, Inc., under 35 U.S.C. § 156. The medical device claimed by the patent is ProGel Pleural Air Leak Sealant, which was assigned premarket approval application (PMA) No. P010047.

A review of the Food and Drug Administration's official records indicates that this product was subject to a regulatory review period before its commercial marketing or use, as required under 35 U.S.C. § 156(a)(4). Our records also indicate that it represents the first permitted commercial marketing or use of the product, as defined under 35 U.S.C. § 156(f)(1).

The PMA was approved on January 14, 2010, which makes the submission of the patent term extension application on March 3, 2010, timely within the meaning of 35 U.S.C. § 156(d)(1).

Should you conclude that the subject patent is eligible for patent term extension, please advise us accordingly. As required by 35 U.S.C. § 156(d)(2)(A) we will then determine the applicable regulatory review period, publish the determination in the *Federal Register*, and notify you of our determination.

Please let me know if we can be of further assistance.

Sincerely yours,

Jane A. Axelrad
Associate Director for Policy
Center for Drug Evaluation and Research

Kappos - ProGel Pleural Air Leak Sealant
Patent No. RE38158
Page 2

cc: N. Nicole Endejann/ Raymond A. Miller
Pepper Hamilton LLP
500 Grant Street
Pittsburgh, PA 15219